

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the Denial of the Family
Daycare License of Catherine Yasenchak

**RECOMMENDATION GRANTING
DEPARTMENT'S MOTION FOR
SUMMARY DISPOSITION**

This matter came on for hearing before Administrative Law Judge Manuel J. Cervantes (ALJ) at 10:30 a.m. on March 24, 2010, at the Carver County Justice Center, Court Room 6, Chaska, MN 55318.

Thomas W. Haines, Assistant County Attorney, appeared on behalf of Carver County Community Social Services (County) and the Department of Human Services (Department). Catherine Yasenchak (Applicant) appeared on her own behalf. The record closed at the conclusion of the hearing on March 24, 2010.

Counsel for the County filed a Motion for Summary Disposition on February 19, 2010. Applicant did not respond in writing to the motion, but agreed at the hearing of March 24, 2010 that there were no material facts in dispute.

STATEMENT OF ISSUE

Should the Applicant be denied a family daycare license because she resides with her fiancé, a person disqualified from having direct contact with, or access to, persons served by Department licensed programs?

The ALJ concludes that the Applicant's license application should be denied by application of Minnesota child care laws, specifically, Minn. Stat. § 245A.05.

Based upon all of the files, records and proceedings herein, and for the reasons set forth below, the ALJ makes the following:

RECOMMENDATION

1. That the Commissioner of Human Services (Commissioner) GRANT the Department's Motion for Summary Disposition; and

2. That the Commissioner UPHOLDS the Department's denial of the family daycare license application of Catherine Yasenchak.

Dated: April 19, 2010

s/Manuel J. Cervantes
MANUEL J. CERVANTES
Administrative Law Judge

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after a review of the record and may adopt, reject or modify this report and recommendation. Under Minn. Stat. § 14.61 (2006), the Commissioner shall not make a final decision until this report has been made available to the parties for at least ten days. The parties may file exceptions to this report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Cal Ludeman, Commissioner, Department of Human Services, 540 Cedar Street, St. Paul, MN 55164, to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

MEMORANDUM

I. Jurisdiction

The ALJ and the Department have jurisdiction pursuant to Minn. Stat. §§ 14.50 and 245.08. The Applicant was given notice of the hearing in this matter and the Department has complied with all relevant procedural requirements.

II. Contention of the Parties

This is an appeal by the Applicant from the Department's denial, dated December 16, 2009, of her family daycare license application.¹ The Department based the denial on a felony-level alcohol related conviction of her finance. Applicant indicates

¹ Order of Denial (Ex. F).

that her fiancé completed chemical dependency treatment and poses no threat to those in the program who might come in contact with him.²

III. Procedural Standard

Summary disposition is the administrative equivalent of summary judgment in district court practice. Summary disposition is appropriate where there is no genuine issue as to any material fact and one party is entitled to judgment as a matter of law when the law is applied to those undisputed facts.³ The Office of Administrative Hearings has generally followed summary judgment standards developed in judicial courts when considering motions for summary disposition in contested case matters.⁴ A genuine issue is considered one that is not frivolous or a sham, and a material fact is one whose resolution will affect the result or outcome of the case.⁵ A moving party has the initial responsibility of showing no material fact is in dispute. The ALJ is to make a recommendation about the appropriate interpretation of the law and about how that law applies to the undisputed facts.

IV. Facts

On June 2, 2009, Applicant completed an application for a Minnesota family daycare license.⁶ The licensing process requires a background study.⁷ Background studies were conducted on the residents of Applicant's home, including her fiancé. In a letter dated August 13, 2009, Applicant's fiancé was notified of a disqualification from having any direct contact with, or access to, persons served by programs licensed by the Department because of a felony-level Driving While Impaired—Refuse to Submit to Test conviction, contrary to Minn. Stat. § 169A.20; an offense which occurred on February 15, 2007.

On August 25, 2009, the County received the fiancé's request to appeal the disqualification.⁸ On August 26, 2009, the County recommended to the Department that the disqualification not be set aside and that a variance not be granted.⁹ On December 16, 2009, the Department denied the fiancé's disqualification appeal.¹⁰ Also, on this date, the Applicant was informed by the Department that her license application was denied and informed her of rights to a contested case hearing. On December 28, 2009, the Applicant appealed the denial of her family daycare license application.¹¹

² Applicant Letter, received March 12, 20010, Torgerson Letter (Ex. C).

³ *Sauter v. Sauter*, 70 N.W.2d 351, 353 (Minn. 1955); *Louwagie v. Witco Chemical Corp.*, 378 N.W.2d 63, 66 (Minn. Ct. App. 1985); Minn. R. 1400.5500, K; Minn. R. Civ. P. 56.03.

⁴ See Minn. R. 1400.6600 (2007).

⁵ *Illinois Farmers Insurance Co. v. Tapemark Co.*, 273 N.W.2d 630, 634 (Minn. 1978); *Highland Chateau, Inc. v. Minnesota Dept. of Public Welfare*, 356 N.W.2d 804, 808 (Minn. Ct. App. 1984).

⁶ Application for Daycare License (Ex. A).

⁷ Minn. Stat. ch. 245C.

⁸ Ex. C.

⁹ County Letter (Ex. D).

¹⁰ Department Letter (Ex. E).

¹¹ Applicant Appeal Letter (Ex. G).

V. Analysis

Under Minn. Stat. § 245C.03, subd. 1, the Commissioner shall conduct a background study on a person applying for a license and on any individual age 13 and over living in the household where the licensed program will be provided. The Applicant and her fiancé have been in a relationship for ten years, have a child in common, and reside together. As a result, the fiancé was required to submit to a background check as part of the family daycare licensing process.

It is undisputed that the fiancé was convicted of a Driving While Impaired offense on February 15, 2007. Under Minn. Stat. § 245C.15, a person convicted of a felony-level alcohol related offense shall be disqualified from having direct contact with, or access to, children or vulnerable adults served in programs licensed by the Department. The Department determined that the fiancé was disqualified from having contact with or access to persons who would be served by its programs.

Under Minn. Stat. § 245A.05, the Commissioner may deny a license if an applicant has an individual living in the household who received a background study who has a disqualification that has not been set aside and no variance has been granted.

Applicant submitted five letters from family and friends in support for her family daycare license application. The letters speak in glowing terms about Applicant's child care abilities, but it appears that they are not aware of the legal bar to a license under her circumstances.

Furthermore, under Minn. Stat. § 245C.24, subd. 3, the Commissioner may not set aside this disqualification for a minimum period of ten years, regardless of whether it is determined that the fiancé poses a risk of harm. Under this section, the Department is required to disqualify the fiancé in this matter and no variance has been granted.

The ALJ concludes that the Department followed Minnesota law in this matter. The ALJ recommends that the Commissioner grant the Department's Motion for Summary Disposition and upholds the Department's denial of Applicant's license application.

M. J. C.